

# Integration of Human Rights Institutions for Strengthening the Independence and Effectiveness of Human Rights Protections in Indonesia

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## 1 Integration of Human Rights Institutions for Strengthening the Independence and Effectiveness of Human Rights Protections in Indonesia

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### Abstract

This normative legal research adopts a conceptual and comparative approach, including data analysis and qualitative description. There is a lack of integration between Indonesia's three different human rights institutions: the Indonesian National Commission on Human Rights (Komnas HAM), the National Commission on Violence Against Women (Komnas Perempuan) and the National Commission for Child Protection (KPAI). These all have the same function and authority, which is to ensure the protection and enforcement of human rights in Indonesia. However, this process is neither independent nor effective, due to differences in the basic status of institutional law and budgetary allocations. The strengthening of human rights institutions should be pursued via institutional integration. These three institutions should be integrated and function as a whole, as is the case for other international human rights institutions. Such a measure would enable the protection and enforcement of human rights in Indonesia to become more independent and effective.

*Keywords— integration, human rights institution, independence and effectiveness*

### 1. Introduction

Komnas HAM, a state institution, is not regulated under the 1945 Indonesian constitution. In some other countries, however, especially in the Asia Pacific region, human rights institutions are regulated by a special law. In countries such as Thailand, South Africa, Malaysia, Australia, Nepal and New Zealand, human rights are addressed directly in the country's constitution.

During the era of transition and reform 1998, the functions and authority of Komnas HAM were put to the test. In May 1998, there were mass riots in Indonesia's major cities, with widespread human rights violations, the most serious of which being sexual violence (rape) committed against women, especially ethnic Chinese (Tionghoa). However, instead of empowering and strengthening the authority of Komnas HAM, this gave rise to a new institution: the National Commission on Violence Against Women (Komnas Perempuan).

Bagir Manan states that the focus should be on empowering politics, not institutionalizing policy. Political empowerment mainly includes manpower, institutional power, and control. To date, the problem of effectiveness, efficiency and control is solved by

creating new institutions (both permanent and ad hoc). Overly fragmented powers are ineffective and inefficient, leading to confusion, uncertainty and feelings of helplessness (Manan, 2015).

Komnas Perempuan is an independent institution that was established under Presidential Decree No. 181/1998 and is regulated by Presidential Regulation No. 65/2005. Komnas Perempuan was born of the demands of civil society, especially women, that the government exercise its responsibilities in responding to and dealing with violence against women (Marzuki, 2011).

As the reform era continued, another human rights protection agency was created: the Indonesian Child Protection Commission (KPAI). KPAI is an independent institution established under Law Number 23, 2002, regarding child protection. Its role is to respond to reports of violence, neglect, and non-fulfillment of the basic rights of Indonesian children. The political decision to establish the KPAI is inseparable from the international community's concern over the condition of Indonesian children. The number of cases of child labor, children living in conflict zones, children involved in armed conflicts such as those in Aceh, high rates of school dropouts, malnutrition, underage marriages, trafficking, etc.,

have prompted the international community to pressure the Indonesian government to establish a special institution responsible for monitoring child protection in Indonesia (Rahayu, 2012).

## 2. Overlap of Function and Authority

Komnas HAM functions on the same level as other state institutions that conduct research, counseling, monitoring and human rights mediation. In addition, the authority of Komnas HAM in monitoring human rights violations was also expanded to include the capacity to summon witnesses by force (Marzuki, 2011). Komnas Perempuan has the same primary function of conducting research, research, counseling, monitoring and human rights mediation. However, Komnas Perempuan does not have the mandate to conduct pro justitia investigations. Komnas Perempuan documents cases and establishes a special reporting mechanism for incidents of serious violence in the region (Asplund *et.al*, 2008). While efforts towards child protection have been made, violence against children still frequently occurs and may even have increased, both in terms of quantity and severity. Perpetrators are often religious (either individuals or groups), and it is even the case that individuals/institutions that should be responsible for implementing child protection (state, government, community, family and parents) become the perpetrators of violence themselves (Komisi Perlindungan Anak Indonesia, 2013).

A discussion of the human rights of women requires an examination of the constitutional rights of women as both Indonesian citizens and as human beings with the right to a dignified existence. Constitutional rights are not always identical to human rights, and a citizen's constitutional rights are not included in the definition of human rights. For example, the right of every citizen to occupy a position in government is a constitutional right, but this is not applicable to non-citizens as a universal human right. The definition of citizens' rights is also split between constitutional rights and legal rights. Constitutional rights in Indonesia are those guaranteed by the 1945 constitution, while legal rights arise from the laws and regulations thereunder (Jamil, 2014).

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Children's rights refer to human rights for children. The Convention on the Rights of the Child is an integral part of international human rights instruments. The child has special needs that relate to his/her situation as a vulnerable or dependent individual. While these may differ according to the stage of growth and development, basic children's rights remain in place (Oetarra *et.al*, 2010).

## 3. Integration of Human Rights Institutions

The right to development requires better conditions for the development and systematic integration of human rights into development policy at both national and

international levels. This section deals with a less burdensome and therefore less controversial interpretation of the place and function of human rights in development, namely, development policies and practices that selectively imbed a human rights dimension (Marks, 2010).

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The integration of authority and the protection and enforcement of human rights within a new state institution ensures its effective and independent function. The aim of the integrative model for human rights institutions is to avoid discrimination between the protection of men, women and children. According to Anastasia Vakulenko, this will entail intersection policies intended to develop new strategies to combat discrimination. (Vakulenko, 2010).

Affirming the independence of human rights institutions enables the results of any investigation to be decided by the courts. Unlike, for example, regional human rights courts, none of the human rights institutions discussed above are able to make legally binding decisions, their powers of "enforcement" lie in the process of naming and shaming a state that is engaged in human rights abuses (Joseph & McBeth, 2010).

The indivisibility principle states that "all human rights are equally important and therefore are not allowed to issue certain rights or certain categories of rights of their parts." The universal principle and the indivisibility principle are regarded as "the most important sacred principles." Together, they became the main slogan of the fiftieth anniversary of the Universal Declaration of Human Rights: "All human rights for all." This sentiment is also affirmed in Article 5 of the Vienna Declaration on the Program of Action, which states that "all human rights are universal, indivisible, interdependent, interconnected (all human rights are universal, indivisible, interdependent and interrelated)" (Soeprapto, *et.al*, 2012).

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The four pillars of transitional justice (prosecutions, truth commissions, reparations, and institutional reform) will now be considered from a gender-sensitive perspective, culminating in a brief discussion of the broader concept of reconciliation (Sifris, 2010).

## 4. Conclusions

The independence of human rights institutions or organs is essential to ensure the effective protection and enforcement of human rights in Indonesia. If not, their function can be abused by the government, leading to human rights violations. For example, the function of Komnas HAM as an investigating agency for cases of human rights violations committed by state authorities may be viewed as compromised. Similarly, Komnas Perempuan and KPAI can be subject to abuse in stating that there are no violations against women and children in instances where such violations are committed by those in power. The independence of

these institutions is hence considered essential to guaranteeing the principle of the rule of law.

The integration of national human rights institutions should be in accordance with both the UN Universal Declaration of Human Rights and the Principles of Paris. The strengthening of the protection of human rights for women and children must be realized without any distinction between hierarchies, institutions and budgetary allocations provided by the state.

To establish an independent, effective national human rights institution, Komnas HAM's, Komnas Perempuan and KPAI should fully integrated. The consequences of integration made Komnas Perempuan and KPAI institutionalized into one body of Komnas HAM. The protection and enforcement of human rights in Indonesia will thus be strengthened.

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